Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 386 of 2002

The Oriental Insurance Company Ltd.,
through its Divisional Manager,
Srinagar, District-Pauri Garhwal.

.... Appellant

Versus

(1)Smt.Jasi Devi W/o Late Prem Lal,
R/o Village-Dadadh,Patwari Circle-
Saikote, Tehsil & District Chamoli.

..... Claimant/Respondent

(2)Mahipal Singh S/o Sri Gabbar Singh,
R/o Village-Khainuri, Tehsil and
District Chamoli.
(Owner of Jeep No. UP 07K-9809)

..... Respondent.

.....

Sri D.K.Sharma, learned counsel for the appellant.
Sri N.S.Negi, learned counsel for the claimant/respondent 1.
Sri R.P.Nautiyal, learned counsel for the respondent No.2.

Date: 27th Aug.,2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the Opp.party/appellant against the judgment and order dated 28.09.2002 passed by the Motor Accident Claims Tribunal/District Judge, Chamoli in Motor Accident Claim Petition No. 52 of 2001, whereby the appellant-Oriental Insurance Company has been directed to pay Rs. 5,10,000/- as compensation to the claimant alongwith interest at the rate of 9% per annum.

2- Brief facts giving rise to this appeal are that on 25.6.2001 Prem Lal-husband of the petitioner had gone to call his younger brother from Chamoli to Rangtoli by vehicle No. UP 07-A-9809. At about 11.15 p.m. on the same

day at about 1-1/2 Kms. away from Chamoli the said vehicle met with an accident due to rash and negligent driving of its driver. In the said accident Prem lal died on the spot. Deceased Prem Lal was employed as technician in Osonika Electronic Company, Delhi and was earning Rs. 4000.00 per month as salary. It was alleged that the deceased was 43 years of age at the time of accident. The window of the deceased filed the claim petition due to the death of her husband Prem Lal in the said accident.

3- The Opp.party No.2 filed written statement before the Tribunal and alleged that the accident was occurred due to the sudden failure of steering of the vehicle in question. The Opp.party No. 1-Oriental Insurance Company also filed its written statement denying all the allegations made in the claim petition. The Tribunal on the pleadings of the parties, framed necessary issues and after recording evidence allowed the claim petition accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Motor Vehicles Act, 1988 and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. We have gone through the entire material on record and perused the impugned judgment. The record does not show that application has been moved for permission under Sec. 170 of the aforesaid Act. In this case the owner of the offending vehicle has contested the case before the Tribunal. There is neither permission of the Tribunal under Section 170 of the Act, nor there is any finding that there has been collusion between the owner and the claimants. Therefore, the

appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus in view of the above law laid down by the Apex Court, none of the contentions raised by the learned counsel for the appellant is tenable and has to be ignored outright.

5- In view of the aforesaid discussions, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned within a period of three months.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh